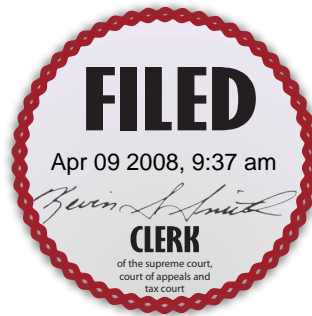


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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CARMON PERDUE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0708-CR-698
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Robert Altice, Judge  
Cause No. 49G04-0612-FB-240955

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**April 9, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

Carmen Perdue appeals her convictions for robbery as a Class B felony and battery as a Class C felony. Before her jury trial, Perdue filed a motion in limine requesting that the State be prohibited from admitting into evidence a 1993 forgery conviction, which the trial court denied. Perdue maintains that the trial court erred by denying her motion because her conviction was more than ten years old, the State failed to argue that the probative value of the evidence substantially outweighed the risk of prejudice, and the State failed to provide her with notice that it intended to use the conviction to impeach her. Finding that Perdue has waived her right to claim error because she introduced the evidence concerning her prior conviction on direct examination, we affirm the judgment of the trial court.

## **Facts and Procedural History**

On December 12, 2006, Perdue and her roommate drove to a Marathon gas station and pulled into the parking lot. Perdue got out of the car and entered the Marathon station wearing a dark hooded sweatshirt, jeans, and a red scarf around her face. After entering the station, she pulled out a horseshoe-shaped knife from under her shirt and told the cashier to give her the money from the cash register. At this point, the cashier began walking from the back of the store to the front where the cash register was located when Perdue said, “Hurry up,” and stabbed her twice with the knife in the abdomen.

After being stabbed, the cashier ran to the register, opened it up, stepped back, and Perdue took the money and left the store. A surveillance camera caught all of this on tape. The cashier then locked the door and called the police. As the responding officer

arrived at the gas station, he noticed a car leaving the station and turning onto a side street leading to a trailer park a short distance away. The officer made a mental note of the vehicle and where it was likely headed and then tended to the cashier who had her hand placed over her bleeding abdomen. The cashier told the officer that the robber was a white stocky female with broad shoulders and described her clothing. After the paramedics arrived, the officer drove to the trailer park and looked for vehicles similar to the one he had passed on his way to the gas station. Because it had rained minutes before the officer entered the trailer park, the officer looked for cars with a wet spot under them indicating that the car had recently been driven. The officer took note of certain suspected vehicles, ran license plate checks on them, and determined that Perdue owned one of the suspected vehicles.

Around this same time, the manager of the Marathon station arrived and informed the police that Perdue was a disgruntled former employee who was recently fired. The police obtained a search warrant, went to Perdue's residence, and conducted a search. During the search, the police found a horseshoe-shaped knife, a black hooded sweatshirt, and jeans. After one of the detectives showed the cashier the knife that had been recovered from Perdue's home, the cashier immediately identified the knife as being the one used in the robbery. Thereafter, another detective showed the cashier a photo lineup, and the cashier identified Perdue as the person who had robbed her.

Perdue was arrested and charged with robbery as a Class B felony<sup>1</sup> and battery as a Class C felony.<sup>2</sup> Before Perdue's jury trial began, she filed a motion in limine

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<sup>1</sup> Ind. Code § 35-42-5-1.

requesting that the court suppress evidence regarding a 1993 forgery conviction under Indiana Evidence Rule 609(b) because the conviction was more than ten years old. The court denied Perdue's motion. While testifying at trial, defense counsel questioned Perdue on direct examination about her 1993 conviction. At the conclusion of the trial, the jury found Perdue guilty on both counts and sentenced her to ten years for the robbery conviction and two years for the battery conviction, to be served consecutively. Perdue now appeals.

### **Discussion and Decision**

On appeal, Perdue claims that the trial court erred by denying her motion in limine because her 1993 forgery conviction was more than ten years old, that the State failed to argue that the probative value of the evidence substantially outweighed the risk of prejudice, and that the State failed to provide her with notice that it intended to use the conviction to impeach her. However, Perdue has waived her right to claim error because she introduced the evidence concerning her forgery conviction herself on direct examination. *See Collins v. State*, 464 N.E.2d 1286, 1290 (Ind. 1984) ("Here, the defendant introduced the evidence concerning his prior convictions himself on direct examination. While defense counsel may have believed that this was an appropriate tactical decision, defendant, by his choice to introduce the evidence, became its proponent and he cannot complain on appeal about its admissibility."). We have long held that the ruling on a motion in limine preserves nothing for appeal. *Id.* ("[T]he ruling on a motion in limine is not reviewable on appeal since the purpose of such a

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<sup>2</sup> Ind. Code § 35-42-2-1.

motion is not to obtain a final ruling upon the admissibility of evidence.”). “The evidence sought to be excluded by the motion in limine must be objected to at the time of its introduction at trial for any error in the denial of the motion to be preserved.” *Id.*

Here, Perdue claims that she “was forced by the trial court’s ruling to admit to the forgery conviction on direct exam to try to minimize its effect upon the jury.” Appellant’s Br. p. 10. This was undoubtedly a tactical decision made by her counsel. Many good trial advocates believe that acknowledging damaging facts minimizes the negative impact on a jury. This tactic is said to take the sting out of the weaknesses of a case. We appreciate the position that Perdue’s counsel was in, but we ultimately agree with the State that this was a tactical decision of counsel, which we will not second-guess.<sup>3</sup> By bringing out the conviction on direct examination, Perdue waived her right to object to its admissibility.

Because Perdue waived the ability to complain about the admission of the conviction, we need not reach the issues of whether her 1993 forgery conviction was more than ten years old, whether the State failed to argue that the probative value of the evidence substantially outweighed the risk of prejudice, and whether the State failed to provide her with notice that it intended to use the conviction to impeach her. By bringing out the conviction on direct examination, Perdue cannot complain on appeal about its admissibility.

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<sup>3</sup> While many trial advocates choose to introduce harmful evidence as a way to minimize its negative impact on a jury, many others counsel against the introduction of harmful evidence because “the cost of introduction normally acts to magnify the harmful impact of such evidence.” Robert H. Klonoff & Paul L. Colby, *Winning Jury Trials: Trial Tactics and Sponsorship Strategies* 66 (National Institute of Trial Advocacy ed., 3d ed. 2007).

Affirmed.

SHARPNACK, J., and BARNES, J., concur.